

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Washington, D.C.

In the Matter of:

ANTHONY CLEMENT AUYER,

Respondent.

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DOCKET NO. 08-3458-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated October 11, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent ANTHONY CLEMENT AUYER that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for an indefinite period from the date of the final determination of this action. The Notice also advised Respondent that the suspension HUD had imposed on him on March 10, 2006, was terminated. The Notice further advised Respondent that the proposal to debar him was in accordance with the procedures set forth in 24 CFR part 24¹. In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the United States District Court, Eastern District of Tennessee, for violating 18 USC §§1341 (Mail Fraud), 1344 (Bank Fraud), 371 (Conspiracy to Commit Bank and Mail Fraud), 1956h (Money Laundering Conspiracy), 1956(a)(1)(A)(1) (Money Laundering), and 1343 (Wire Fraud). Respondent pleaded guilty to fourteen counts in the Indictment and on conviction was sentenced to a thirty-four-month term of imprisonment and ordered to pay restitution of \$1,358,059.00, and placed on supervised release for five years.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on May 28, 2008, before the Debarring Official's Designee,

¹ HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180" the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. However, because this matter arose before publication of HUD's final rule, for the convenience of the reader, references herein will be to the regulations in their former location at 24 CFR part 24.

Mortimer F. Coward. Respondent participated by phone at the hearing, appearing pro se. Amy Brown, Esq. appeared on behalf of HUD. The record closed on June 27, 2008.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for an indefinite period from the date of this determination. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment dated October 11, 2007.
- (2) An Indictment filed May 10, 2005, in the United States District Court, Eastern District of Tennessee, charging Respondent with fourteen counts involving mail fraud, bank fraud, conspiracy to commit bank and mail fraud, money laundering conspiracy, money laundering, and wire fraud.
- (3) The Judgment in a Criminal Case filed August 4, 2006, finding Respondent guilty of the fourteen counts to which he pleaded guilty.
- (4) A letter dated October 29, 2007, from Respondent addressed to the Debarment Docket Clerk.
- (5) The Government's Pre-Hearing Brief filed March 11, 2008 (including all attachments and exhibits thereto).
- (6) Respondent's Reply to the Government's Pre-Hearing Brief filed May 12, 2008 (with court filings attached thereto, including Petitioner's Final Reply to 28 U.S.C. §2255; Memorandum of Law in Support of Habeas Corpus Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. §2255; and transcripts from grand jury and trial proceedings related to Respondent and his coconspirator).

Government Counsel's Arguments

Government counsel alleges that Respondent, the owner of Anthony's Construction Company, Inc. (ACCI), orchestrated a scheme to defraud the Tennessee Department of Economic and Community Development (TDECD). ACCI received a loan from TDECD to buy equipment for a lumber mill ACCI had purchased. The loan was drawn from Community Development Block Grant funding from HUD. Respondent submitted fraudulent invoices to TDECD, receiving approximately \$408,920.00 of loan funds for lumber mill equipment that allegedly was purchased by ACCI. In truth, the money that Respondent received was used to make purchases other than those represented to TDECD. Respondent did not repay the money received from TDECD.

Counsel further alleges that Respondent was charged with schemes to defraud two federally insured banks. Respondent used fraudulent means to receive a loan from Bank Tennessee for approximately \$1.77 million to buy a lumber mill. Respondent used part of the loan to pay off a loan for an unindicted coconspirator, not for the purchase of the

mill. Respondent submitted false invoices to Bank Tennessee for supplies that ACCI allegedly had purchased. Respondent converted to his own use approximately \$31,500.00 of the money he received to pay the invoices. Government counsel charges that the acts described above constitute grounds for debarment pursuant to 2 CFR 180.800(a)(1) and (4).

Government counsel argues that Respondent is subject to the debarment regulations. Respondent was the recipient of a TCECD loan, funded using federal money, thus he has been, and may reasonably be expected to be, a participant or principal in covered transactions. *See* 2 CFR 180.150. Counsel argues that the Government has met its burden of demonstrating cause for Respondent's debarment based on his conviction for multiple counts of fraudulent activity. *See* 2 CFR 180.800(a)(1) and 180.850. Counsel also argues that cause for Respondent's debarment exists under 2 CFR 180.800(a)(4) because Respondent's fraudulent acts indicate a lack of business integrity or honesty that seriously affects his present responsibility. Government counsel further argues that, based on Respondent's misdeeds, Respondent's debarment also is in the public interest. *See* 2 CFR 180.125(a).

In moving for Respondent's indefinite debarment, counsel argues that Respondent's actions were not only egregious but "part of a carefully planned, organized and orchestrated scheme meant to deprive both the Government and private lenders of substantial sums of money." Additionally, counsel justifies Respondent's indefinite debarment by arguing that to allow Respondent to do business with HUD would place government funds at risk. Counsel also states that Respondent has offered no justification for a reduction in the proposed debarment or "substantive grounds of mitigation." Accordingly, counsel concludes that "an indefinite debarment is exceedingly appropriate."

Respondent's Arguments

Respondent argues in his submission that, contrary to the government's allegations, the funds from TDECD were used to install and purchase equipment although the issue was whether he had "the proper permissions [to] purchase alternative equipment." Respondent contends that TDECD funds were used for nothing else but equipment purchase, and the bulk of the equipment was sold at bankruptcy. Respondent also takes issue with the government's contention that part of the \$800,000.00 loan was used for purposes other than for purchase of the lumber mill. According to Respondent, the entire loan was used to pay off the balance of the existing mortgage on the mill. Respondent states that "[n]o monies [mentioned in] counts 1-3 were ever used for anything other than what the loan documents provided for, and the Government has never offered any proof to the contrary."

Respondent also dismisses as false the government's allegation that he received \$31,500.00 to pay the company's invoices but instead converted the money to his own use. Respondent asserts the funds were used to pay company expenses. Respondent points out that he is "currently moving for counts 1-3 to be overturned." Respondent

states that he “made some unintentional mistakes on counts 4-14, none were meant to defraud, and NONE amounted to any funds being converted to [his] personal use.” (Emphasis in original) Respondent also denies that there was a carefully planned scheme to defraud. Respondent testified that Bank Tennessee received over \$2 million in cash and collateral from the foreclosure and bankruptcy actions.² Also, Respondent has repaid TDECD almost all the funds he received from TDECD except for \$53,000.00 that he is paying back.

Respondent takes responsibility for his mistakes and argues that it was a case of “merely things happening that [he] did not know were illegal.” Respondent testified that his criminal conviction is on appeal and that he repaid most of the money at issue here before he was convicted.

Respondent states that he has no objection to a three-year term, but objects to a longer term. Respondent concludes that “in light of the evidence that the debarment [be] limited to a 3-year term.”

Findings of Fact

1. Respondent’s company, ACCI, was the recipient of a loan from TDECD that was funded with CDBG money from HUD.
2. ACCI received the loan to fund the purchase of equipment for a lumber mill that the company owned.
3. Respondent submitted invoices to TDECD and received \$408,920.00 in loan funds for the purchase of equipment for the lumber mill.
4. Respondent used the money received from TDECD for purposes other than those represented to TDECD.
5. Respondent received a loan from Bank Tennessee for \$1.77 million towards the purchase of a lumber mill.
6. Respondent used about half of the loan proceeds to pay off a loan for a coconspirator.
7. Respondent submitted invoices to Bank Tennessee for supplies that ACCI allegedly had purchased.
8. Respondent converted the funds received to settle the invoices to his own use.
9. Respondent was indicted on fourteen counts relating to the transactions identified above.
10. Respondent pleaded guilty to all fourteen counts and was sentenced to thirty-four months in prison. In addition, Respondent was placed on five years’ supervised release and ordered to make restitution of \$1,358,059.00.

² The record was kept open until June 27, 2008, to allow Respondent sufficient time to produce any and all documents evidencing Bank Tennessee’s receipt of over \$2 million from the foreclosure and bankruptcy actions. The Debarring Official received no documents from Respondent, nor was any other evidence presented to support Respondent’s claims.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 2 CFR part 180.
2. Respondent's criminal conviction serves as the basis for his debarment.
3. Pursuant to 2 CFR 180.800, a conviction for fraud, *inter alia*, is a cause for debarment.
4. Respondent engaged in fraudulent schemes to use the loan funds from TDECD and from Bank Tennessee for his own personal use or for purposes not intended by either creditor.
5. Respondent has not made restitution as ordered by the court.
6. Respondent provided no documentation or evidence to support his testimony that most of the funds that were fraudulently converted have been recovered by TDECD or Bank Tennessee.
7. Respondent's acceptance of responsibility for his wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed.
8. The egregiousness of Respondent's acts and the financial losses suffered by Respondent's creditors are determinative factors in imposing the period of debarment on Respondent. *See* 2 CFR 180.865.
9. Respondent provided no independent evidence that he is presently responsible. *See* 2 CFR 180.855.
10. Respondent's appeal of his conviction is not a factor to be considered in determining the period of debarment to be imposed.
11. HUD's debarment regulations specifically allow a debarring official to consider a term of debarment in excess of three years. *See* 2 CFR 180.865(a).
12. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
13. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
14. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for an indefinite period from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 8/12/08



Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2008, a true copy of the
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

Tammie M. Parshall

Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Dane Narode, Esq.
Amy Brown, Esq.
Government Counsel

FIRST CLASS MAIL

Anthony Clement Auyer
